

Appl. No.: 10/720,023
Amdt. dated 05/31/2005
Reply to Office action of February 1, 2005

REMARKS/ARGUMENTS

This is a response to the non-final Official Action dated February 1, 2005, which set an extendable deadline of **May 1, 2005**. A payment for a one month extension of time is enclosed to extend the response period to **June 1, 2005**.

Claims 2-16 were pending in this application, with 7 claims in independent form. Claims 2-16 were rejected. After this amendment, Claims 2-16 are still pending.

Response to Information Disclosure Statement Comment

Applicant appreciates the Examiner's thorough review of the application and in response to your concerns regarding patents identified in the background, an Information Disclosure Statement is filed herewith under 37 C.F.R. § 1.17(p). The Commissioner is authorized to charge the \$180.00 fee specified to our Deposit Account No. 16-0605. The Commissioner is authorized to charge any additional fee, or credit any refund, to our Deposit Account No. 16-0605.

Response to Drawing Objection

In the Office Action, the Examiner objected to the drawings for not identifying items **220** and **320** referenced in the specification text. Upon further review, it appears that the drawing and the specification are in conflict. In Figs. 5 and 6, the inflatable member is identified as 224 and 324 respectively; however the specification identifies the inflatable member as **220** and **320** respectively. The Applicant has amended the specification to conform with the figures. Applicant respectfully requests this objection to the drawings be withdrawn in light of the amended specification.

Response to Claim Objections

The Examiner has objected to Claim 5 and stated “[t]he limitation ‘said bladder’ lacks proper antecedent basis.” In amended Claim 5, “said bladder” has been replaced with “said inflatable member.” Accordingly, the Applicant requests the Examiner to withdraw this objection.

Response to Claim Rejections 35 USC § 103

Claims 2-4 have been rejected by the Examiner as being unpatentable over U.S. Patent 5,453,082 *Lamont* in view of U.S. Patent 2,543,284 to *Gleason*. The Examiner alleges *Lamont* discloses a medical boot with an inflatable member positioned beneath a user's foot such that alternate plantarflexion and dorsiflexion of the foot is provided. *Gleason* is relied on to teach placing an inflatable member on both top and bottom of a user's limb. The Applicant respectfully traverses this rejection.

A Prima Facie Case of Obviousness Has Not Been Established

To establish a prima facie case of obviousness, three basic criteria must be met. These criteria are as follows: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2143.

Applicant respectfully asserts that the Examiner has failed to show that the combination of *Lamont* and *Gleason* discloses or suggests all the claimed limitations. The discussion below identifies at least some of the limitations in the rejected claims that are not disclosed or suggested by the prior art references cited by the Examiner.

Independent Claim 2

Pending Independent Claim 2 includes the limitation of “alternatively inflating said first and said second inflatable member and also for alternately deflating said first and said second

inflatable member, such that alternate plantarflexion and dorsiflexion of the foot is provided.” It is respectfully submitted that *Lamont* and *Gleason* do not teach or suggest this limitation.

As the Examiner has conceded, *Lamont* describes a splint that utilizes only one inflatable member to provide flexion of a patient’s foot. Specifically, *Lamont* states:

The present invention includes an inflatable bladder mounted between the hard sole of an orthotic splint and the sole of the patient’s foot. A nurse can adjust the plantar position of the user’s foot in very small increments by inflating or deflating the bladder.

(Column 1, Lines 51-55). Applicant respectfully submits that *Lamont* does not disclose or suggest the use of a second inflatable member to provide dorsiflexion and plantarflexion of the foot. Because only one bladder is used in the *Lamont* device, flexion in only one direction is provided (from beneath the foot).

Gleason describes a device to stimulate blood circulation and to massage muscles by encompassing a limb with inflatable bladders. The rigid frame of *Gleason* prevents movement of the limb during treatment by this device. In other words, two bladders are disclosed but neither bladder causes flexion of a joint.

Neither of these references discloses or suggests a second bladder that provides flexion of a patient’s foot. Accordingly, the combination of *Lamont* and *Gleason* does not disclose or suggest “alternatively inflating said first and said second inflatable member and also for alternately deflating said first and said second inflatable member, such that alternate plantarflexion and dorsiflexion of the foot is provided.”

Because the *Lamont* and *Gleason* do not disclose or suggest all of the limitations of Claim 2, Applicants respectfully request that the Examiner withdraw the current rejection of Claim 2.

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Dependent Claims 3 and 4

Dependent Claims 3 and 4 depend from independent Claim 2. Accordingly, for the reasons set forth above, Applicants respectfully assert that these claims are in condition for allowance and, thus, request that the Examiner withdraw the current rejection of these dependent claims under 35. U.S.C. §103(a).

Response to Double Patenting Rejection

The Examiner has rejected claims 5-16 based on a theory of non-statutory double patenting. In response, a terminal disclaimer is filed concurrently with this response. Accordingly, the Applicant respectfully requests the Examiner to withdraw this rejection.

Conclusion

In view of the remarks presented above, it is respectfully submitted that Claims 2-16 of the application are now in condition for allowance. The Examiner is encouraged to contact Applicants' undersigned attorney at (404) 881-7728 to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



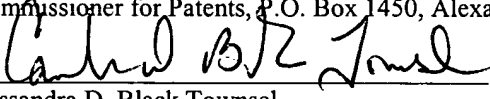
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 31, 2005


Cassandra D. Black Townsel

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Amendments to the Drawings:

No amendments to the drawings at this time.